IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

OP.No. 27919 of 2001(W)

PETITIONER:
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1. **ANTONY VARGHESE,**
DIE-MAKER, COMMON FACILITY SERVICE CENTRE,
INDUSTRIES DEPARTMENT,
CHANGANACHERRY INDUSTRIAL NAGAR P.O 686 106
RESIDING AT KOOVAKKATTU HOUSE, MAMMOOD P.O 686 553,
KOTTAYAM DISTRICT.

2. **K.R.KRISHNAN NAIR,**
MACHINE OPERATOR GRADE I,
COMMON FACILITY SERVICE CENTRE,
INDUSTRIES DEPARTMENT,
CHANGANACHERRY INDUSTRIAL NAGAR P.O.686 106
RESIDING AT RAJI BHAVAN,
ITHITHANAM PO 686536,
KOTTAYAM DISTRICT.

3. **M.M.KURIAN,**
MACHINE OPERATOR GRADE I,
COMMON FACILITY SERVICE CENTRE,
INDUSTRIES DEPARTMENT,
CHANGANACHERRY INDUSTRIAL NAGAR P.O 686106
RESIDING AT MURIKAD HOUSE, NALUMNAKAL P.O 686 538.

4. **MATHEW THOMAS,**
MACHINE OPERATOR GRADE I,
COMMON FACILITY SERVICE CENTRE,
INDUSTRIES DEPARTMENT,
CHANGANACHERRY INDUSTRIAL NAGAR P.O 686 106
RESIDING AT VECHOOKAROTTU HOUSE, VENKURINJI P.O 686 510
KOTTAYAM DISTRICT.

5. **K.N.SIVAN,**
MACHINE OPERATOR GRADE I, COMMON FACILITY SERVICE CENTRE,
INDUSTRIES DEPARTMENT,
CHANGANACHERRY INDUSTRIAL NAGAR P.O, 686 106 RESIDING AT
KUNNUPURAYIDOM HOUSE, KAIPUZHA P.O 686 602,
KOTTAYAM DISTRICT.

BY ADV. SRI.M.N.MATHEW

RESPONDENTS:
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1. **THE DIRECTOR,**
   COMMON FACILITY SERVICE CENTRE, INDUSTRIES DEPARTMENT,
   CHANGANACHERRY INDUSTRIAL NAGA P.O 686 106.

2. **THE DIRECTOR OF INDUSTRIES AND COMMERCE,**
   OFFICE OF THE DIRECTORATE OF INDUSTRIES AND COMMERCE,
   THIRUVANANTHAPURAM.

3. **THE COMMISSIONER AND SECRETARY TO GOVERNMENT,**
   INDUSTRIES DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

4. **THE STATE OF KERALA REPRESENTED BY THE**
   CHIEF SECRETARY, GOVERNMENT OF KERALA,
   SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO. 27919/2001

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF JUDGEMENT DATED 19.2.1992 OF THE HON'BLE HIGH COURT OF KERALA IN OP NO.4878/1990-E.

EXT.P2: TRUE COPY OF JUDGMENT DATED 22.6.1993 OF THE HON'BLE HIGH COURT OF KERALA IN W.A. NO.436 OF 1992.

EXT.P3: TRUE COPY OF G.O.MS NO.134/931/ID DATED 27.10.93 ISSUED BY THE 4TH RESPONDENT.

EXT.P4: TRUE COPY OF 1ST PETITIONER'S REPRESENTATION DATED 19.11.1996 SENT TO THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF PETITIONER'S REPRESENTATION DATED 15.4.2000 SENT TO THE 4TH RESPONDENT.

EXT.P6: TRUE COPY OF WORKING SHEET OF PAY FIXATION IN RESPECT OF THE 1ST PETITIONER SENT TO THE 4TH RESPONDENT AS ENCLOSURE TO EXT.P5 DATED 15.4.2000.

EXT.P7: TRUE COPY OF JUDGMENT DATED 29.1.2001 OF THE HON'BLE HIGH COURT OF KERALA IN OP NO.24474 OF 2000 L

EXT.P8: TRUE COPY OF G.O(RT) NO.486/2001/ID DATED 16.5.2001 ISSUED BY THE 4TH RESPONDENT.

EXHIBITS OF R2

EXT.R2(a): COPY OF GO (MS0 NO.134/93/ID DATED 27.10.93.

//TRUE COPY//

Antony Dominic, J.
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O.P.No. 27919 of 2001
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Dated this the 14th day of February, 2007.

JUDGMENT

Petitioners, five in number, have filed this Writ Petition seeking to quash Exts.P3 and P8 and to declare that they are eligible and entitled to the same salaries, allowances and other service benefits in the category of Machine Operator, as in the case of Machine Operators recruited through Public Service Commission.

2. From the pleadings, it is seen that the petitioners joined the Common Facility Service Centre at Industrial Estate, Changanacherry, initially on casual basis and were thereafter regularised extending them statutory benefits that were applicable to the employees in factories. Petitioners along with some other similarly situated persons had filed O.P.No.4878 of 1990 before this Court asserting their entitlement to be treated as equals to persons similarly placed like them and working as Machine Operators, but were recruited through the Public Service Commission in the matters including pay, etc.

O.P.No.4878 of 1990 was disposed of by Ext.P1 judgment dated 19.2.1992. In the judgment, this Court examined the question whether the petitioners therein were discharging the same duties as those Machine Operators recruited through the Public Service Commission. After examining this issue in detail, this Court entered a positive finding that they were doing the same work as those recruited through the Public Service Commission and this finding is reflected in paragraphs 5 and 6 of Ext.P1 judgment. In so far as their plea for extending them the same scale of pay as applicable to their counter parts recruited through the Public Service Commission applying the principle of equal pay for equal work, as enunciated by the Supreme Court in the judgments referred to in Ext.P1, this Court directed the respondents to regularise the service of the petitioners and to bring them under the purview of the Kerala Servce Rules. It was also directed that with effect from the date on which they are regularised and brought under the purview of the Kerala Service Rules, they must be denied the benefits under the Factories Act and similar enactments applicable to the employees in factories. Taking into account the long service of more than two decades rendered by the petitioners therein, it was also directed that the directions in the judgment should be complied with as expeditiously as possible, at any rate, within one

month from the date of receipt of a copy of that judgment.

3. The respondents in Ext.P1 judgment carried the matter in appeal as W.A.No.436 of 1992, which was dismissed by a Division Bench of this Court by Ext.P2 judgment. The contention of the Government Pleader that the responsibilities of the respondents in the appeal were different from that of their counterparts and that the classification of these two sets of employees was based on qualification, nature of duties, etc. was dealt with and negatived. It was found that there was sufficient material on record to establish the plea of the respondents/petitioners that they were doing the same type of work as that of those recruited through the Public Service Commission. Further, this court also answered the contention regarding their entitlement to get the same scale of pay as paid to the employees recruited through Public Service Commission and upheld the direction of the learned single Judge in this regard as well. Taking note of the complaint of the petitioners regarding the inaction of the appellants in the Writ Appeal to implement the judgment after expressing its distress, this Court directed that the judgment shall be implemented without delay and a time limit of one month was also specified. With this, the controversy was thus settled.

4. In implementation of Exts.P1 and P2 judgments, Ext.P3 dated

27.10.1993 order was issued by the fourth respondent. The complaint in this Writ Petition starts from Ext.P3, in as much as in Ext.P3, while regularising all the 15 petitioners in Ext.P1 and P2 judgments, nine among them were regularised as Machine Operator Grade I in the scale of pay of Rs.950-1500 and the remaining six of them were regularised as Machine Operator Grade II in the scale of pay of Rs.825-1250. According to the petitioners, in view of the positive findings entered into by this Court in Exts.P1 and P2, there was no basis or rationale for regularising six of them in Grade II and extending them a lower scale of pay. They also say that with effect from 1.3.1992 scale of pay as applicable to them was revised by Government order dated 25.9.1993 and that this benefit was also not extended to them. Apparently objecting to the discriminatory attitude that shown against them, representations were made and Exts.P4 and P5 are stated to be two of such representations. Thereafter, five of them filed O.P.No.24474 of 2000 before this Court and the Original Petition was disposed of by Ext.P7 judgment dated 29th January, 2001 directing consideration and disposal of Ext.P5 representation dated 15.4.2000. Complying with the direction thus issued in Ext.P7 judgment, Ext. P8 order was issued rejecting their claim and informing that there was no merit in their claim for alteration of the scale of pay

that was extended to them. It is in this background that the present Original Petition is filed by the aforesaid 5 petitioners.

5. Counsel for the petitioners submitted that in view of the findings entered into by this Court in Exts.P1 and P2 with reference to similarity in the nature of duties discharged by them and their entitlement for the same scale of pay as their counter parts recruited through Public Service Commission, there was no justification for the Government to classify the 15 employees into two classes and extending them different benefits by regularising them as Machine Operator Grade I and Machine Operator Grade II. They also pleaded for the benefit of pay revision as per Government order dated 25.9.1993. The Government Pleader would argue for the position that the Writ Petition is liable to be dismissed. According to him, Ext.P3 dated 27.10.1993 is the order under challenge and the representations were belated and are vague and there has never been any positive claim for the revised pay now raised and therefore, the petition is liable to be dismissed. He also raised a technical contention that some of the prayers sought for are already covered by Exts.P1 and P2 judgments and hence, another Original Petition cannot be maintained.

6. A reading of Exts.P1 and P2 judgments would show that the issue regarding similarity of the duties discharged by the petitioners

and their entitlement to be equally treated with the Machine Operators, who are recruited through Public Service Commission, is concluded as between the parties and therefore, it is not open to the respondents to raise a plea otherwise at this distance of time. Therefore, that issue having attained finality, cannot be reopened. However, as already noted, the present complaint of the petitioners is essentially against treating the service of some of the petitioners in Ext.P1 as Machine Operator Grade II and their prayer is that they should also be extended the revised scale of pay with effect from 27.10.1993, the date on which Ext.P3 was issued implementing the directions of this Court in Exts. P1 and P2 as in the meanwhile, pay was revised with effect from 1.3.1992. It is an admitted case that with effect from 1.3.1992, the scale of pay of Rs.950-1250 was revised to Rs.1200-2040. Although a contention to the contrary is seen raised in the counter affidavit, that was not pressed into service when the matter was heard. In view of the positive findings entered into by this Court in Exts.P1 and P2, the entitlement of the petitioners for the same Grade and scale of pay that was enjoyed by the Machine Operators recruited through the Public Service Commission, namely, Rs.1200-2040, cannot be declined. There was also no justification for the fourth respondent to have regularised six of them as Machine

Operators Grade II, as I see no valid reason to uphold the said classification.

7. However, the question whether the challenge now raised by the petitioners against Ext.P3 dated 27.10.1993 and whether they are entitled to that claim at this distance of time remains to be resolved. Exts.P4 and P5 are the representations that were stated to have been made by the petitioners. A reading of Ext.P4 does not disclose that they have raised a complaint regarding their claim for revised scale of pay with effect from 27.10.1993. It is only in Ext.P5 dated 15.4.2000 that a complaint in this regard is made for the first time and it was this representation which was ordered to be considered, resulting in Ext.P8. In view of the above, there is considerable justification in the contention of the Government Pleader regarding the delay. However, it being the claim for revised salary, according to me, it is a recurring cause of action and therefore the delay cannot result in total denial of their claim. It can at best defeat their claim for that part of the monetary benefits, which would have become time barred at the time when they filed the Writ Petition. Therefore, though they are entitled to the pay as revised with effect from 1.3.1992, they can be allowed the monetary benefits only for a period of three years preceding the date of filing the Writ Petition.

8. In the view I had taken, I am fortified by the decision of the Apex Court in the case of **M.R.Gupta** v. **Union of India and Others** – (1995) 5 S.C.C. 628. Dealing with the question whether the Tribunal was justified in dismissing as time barred an application made for proper fixation of pay, it was held as follows:

> "5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to

the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind (see ***Thota China Subba Rao v. Mattapalli Raju*** – AIR 1950 FC 1)."

The Law thus laid down by the Supreme Court is squrely applicable to the facts of this case as well. Since the issues that are dealt with by me arise out of the implementation of Exts.P1 and P2 judgments, the

Government Pleader's contention that the prayers sought for are already covered by these judgments, has no merit.

9. Accordingly, it is declared that the petitioners are entitled to the monetary benefits of the revised scale of pay of Rs.1200-2040 from three years preceding 19th September 2001, the date of filing this Original Petition as the benefits for the prior period had by then become time barred by application of the Law of Limitation. Their pay and other benefits will be fixed notionally as on that date and arrears, if any, will be paid. They will also be entitled to corresponding revisions effected thereafter and the consequent monetary benefits for the subsequent periods. The benefits should be worked out and paid within a period of three months from the date of receipt of a copy of this judgment. No other points are raised.

Writ Petition is disposed of as above, without any order as to costs.

Antony Dominic
Judge.

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